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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

BEFORE

THE HON'BLE MR. JUSTICE V. P. MOHAN KUMAR

WRIT PETITION NO. 18500 OF 1992

BETWEEN :

1. Parvathamma, Wife of late Monappa, aged 50 years, house-hold work
2. Laxmi, D/o Monappa, Wife of T.S. Patter, aged 30 years
3. Nagendra, S/o Monappa, aged 25 years, Goldsmith
4. Kalappa, S/o Monappa, aged 22 years, Student

All are residing at Belgera,
Yadgiri Taluk, Gulbarga District

.. PETITIONERS

(Sri K. Giridhar for
Sri M.B. Prabhaker, Advocate)

A N D :

1. Lachmanna, Son of Basappa, agriculturist, major, residing at Belgera, Yadgiri Taluk, Gulbarga District
2. Mahadevappa, S/o Lachmanna, major, residing at Belgera, Yadgiri Taluk, Gulbarga District

3. The Assistant Commissioner,
Yadgiri Sub Division, Yadgiri

4. The Tahsildar, Yadgiri Taluk
Yadgiri, Gulbarga District

.. RESPONDENTS

(Sri Veeresh B. Patil for R-1 & 2
Sri T.P. Nambiar, A.G.A. for R - 3 & 4)

Writ Petition filed under Articles 226 & 227 of the Constitution of India, praying to; ISSUE A WRIT of certiorari or any other appropriate writ, order or direction, quashing the impugned order of the Assistant Commissioner, Yadgiri Sub-Division, Yadgiri No. REV/ROR/APL/25/89-90 dated 28.10.1991 - Annexure 'B', etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

O_R_D_E_R_

The 1st petitioner is the wife of late one Monappa who purchased agricultural land of one acre out of 2 acres 23 guntas situated at Belageri of Yadgiri Taluk. It belonged to one Malleshappa who sold the portion of land to the 1st petitioner's husband by the registered sale deed dated 11-2-1988. After the purchase he made an application for mutation of the record of rights



rights in his name. The 4th respondent after giving notice to the interested parties passed an order on 30-1-1989 mutating in the revenue register the name of the husband of the 1st petitioner. That order was challenged by respondents 1 and 2 in appeal before the 3rd respondent. By Annexure-B order the 3rd respondent set aside Annexure-A order. While passing the order the appellate authority held that the alienation infringed the provision of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act 1966, hereinafter referred to the Act. The said order is challenged in this proceeding.

I have heard Mr. K. Giridhar, learned counsel for Sri M.B. Prabhakar for the petitioner and Mr. Veeresh B. Patel for respondents 1 and 2 and the learned Government Advocate as well, at length.

The land in question was a fragment as defined under Section 2(g) of the said Act. It is admittedly not notified under Section 4(2) of the Act. Subsequently it was further fragmented by the alienation

alienee in question. Perhaps the wordings of Section 6 of the Act indicates that the prohibition is in regard to safeguard the right of the land owner under Section 5(1)(b) of the Act. But the right under Section 5(1)(b) will ensue only in the event Section 5(1)(a) has been complied with. Section 5(1)(a) inter alia says that no person shall sell any fragment in respect of which a notice has been given under sub-section (2) of Section 4, except in accordance with the provisions of clause (b). Therefore issuance of notice is a mandatory requirement and this has not been complied with. It therefore follows that the right contemplated under Section 5(1)(b) has not come into existence in favour of respondents 1 and 2. If the right under Section 5(1)(b) has not arisen probably respondents 1 and 2 cannot complain that there is violation of the provisions of the Act as contemplated under Section - 6 thereof. The premises adopted by the Appellate Authority in passing the impugned order is therefore is not correct.

In this case petitioner made an application for

for mutation entry in the Khatha. That application may be allowed or rejected. In such proceeding it is not correct on the part of the Appellate Authority to examine whether there has been violation of Fragmentation and Consolidation of Holdings Act etc. That is an independent proceeding. That apart on the date of which the order was passed on 28-10-1991 after the Act was repealed with effect from 2nd February 1991. Therefore there is no question of the 1 and 2 respondent invoking the provisions thereof and holding that the Fragmentation and Consolidation of Holdings Act has been violated. On this ground also the impugned order is set aside. The writ petition stands disposed of.

Sd/-
JUDGE

